

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NAME INTELLIGENCE, INC., *et al.*,

Plaintiffs,

vs.

LAUCHLIN McKINNON; JEFF EHLERT,

Defendants.

Case No. 2:10-cv-01202-RCJ-GWF

ORDER

Motion to Strike Plaintiffs' 26(a)(2)
Disclosure Statement - #95

This matter comes before the Court on Defendant McKinnon's Emergency Motion to Strike Plaintiffs Name Intelligence, Inc. and Jay Westerdal's Rule 26(a)(2) Disclosure Statement (#95), filed on February 24, 2012; Defendant Jeff Ehlert's Joinder to Motion to Strike Plaintiffs Name Intelligence Inc. and Jay Westerdal's Rule 26(a)(2) Disclosure Statement (#102), filed on March 8, 2012; Plaintiffs' Opposition to McKinnon's Emergency Motion to Strike Plaintiffs' Rule 26(a)(2) Disclosure Statement (#103); Defendant Vannozzi's Joinder to Defendant McKinnon's Motion to Strike Plaintiffs' Name Intelligence, Inc. and Jay Westerdal's Rule 26(a)(2) Disclosure Statement (104), filed on March 9, 2012; and McKinnon's Reply to Plaintiffs' Opposition to Emergency Motion to Strike Rule 26(a)(2) Disclosure Statement (#106), filed on March 19, 2012. The Court conducted a hearing on this matter on March 28, 2012 and orally granted the Defendant's Motion (#95). This Order follows.

Federal Rule of Civil Procedure 26(a)(2)(B) requires the parties to disclose the identity of each expert witness "accompanied by a written report prepared and signed by the witness." Where a party fails to meet their burden of showing that the untimely disclosure was justified or harmless, exclusion of the report becomes a "self-executing," "automatic" sanction to "provide[] a strong

1 inducement for disclosure of material....” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d
2 1101, 1106 (9th Cir. 2001) (citing Fed.R.Civ.P. 37 advisory committee's note (1993)).

3 Here, Plaintiffs Name Intelligence and Jay Westerdal disclosed their expert report one day
4 after the expert disclosure deadline. The untimely disclosure however consisted solely of a one-
5 page curriculum vitae of the expert witness. *See Defendant’s Motion (#95)* at Exhibit A. There was
6 no written report as required by Rule 26(a). The Court therefore finds Plaintiffs’ expert disclosure
7 was improper and untimely. The Court further finds that Plaintiffs failed to meet their burden of
8 showing that the untimely disclosure was justified or harmless. The Court will therefore grant
9 Defendant McKinnon’s Motion to Strike (#95). This Order incorporates all the findings made at
10 the hearing not otherwise mentioned herein. Accordingly,

11 **IT IS HEREBY ORDERED** that Defendant McKinnon’s Emergency Motion to Strike
12 Plaintiffs Name Intelligence, Inc. and Jay Westerdal’s Rule 26(a)(2) Disclosure Statement (#95) is
13 **granted.**

14 DATED this 29th day of March, 2012.

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17 GEORGE FOLEY, JR.
18 United States Magistrate Judge
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